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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,418	01/29/2004	Andrew M. Pluister	1827-045	6973

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EXAMINER
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RAO, SHRINIVAS H

ART UNIT	PAPER NUMBER
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2814

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No. 10/768,418	Applicant(s) PLUISTER, ANDREW M.	
	Examiner Steven H. Rao	Art Unit 2814	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicants' amendment filed on March 09, 2006 and response to noncompliant amendment filed on May 02, 2006 has been entered and forwarded to the Examiner on December 20, 2006.

Therefore claims 1, 11 and 12 as amended by the amendment and claims 2 to 10 and 13 as previously recited are currently pending in the Application.

### ***Election/Restrictions***

This application contains claim 14 -23 drawn to an invention nonelected with traverse in Paper No. 03/09/ 2006 .

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections. 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless - (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by over Langen et al. ( U.S Patent No. 4,997,689 ( herein after Lagen).

With respect to claim 1 to the extent understood, Langen describes a bundle of cables comprising: a substantially flexible central member having a first side and a

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second side;( Langen figure 2 "C".) an adhesive located on at least one of said first and second sides of the flexible strip; ( figure 1, col.4 line 67 to col. 5 line 2) and a plurality of cables for semi permanent bonding to the adhesive of the substantially flexible strip in a bundled externally accessible fashion. ( Langen figures 1-2, col. 3 line 53-58, col. 5 line 3-4), to facilitate manual detachment of one or more of said cables from said adhesive on the flexible central member.

The presently recited limitations "externally accessible fashion" and " to facilitate manual detachment of one or more of said cables from said adhesive o the flexible central member " are taken to be mere recitation of newly discovered function or property , inherently possessed by things in the prior art ( i.e any thing that is not completely enclosed will be externally accessible fashion as stated in Applicants' specification page 5 lines 15-20 ( reproduced below).

"The cables 12, 14, 16, 18 are preferably individually jacketed cables. In a preferred embodiment, two of the cables are Category 5e # 24 gauge, four pair cables with flame-retardant PVC jackets for voice and data communication, and two of the cables are RG-6/U cables with flame retardant PVC jackets for video and data services. However, it is appreciated that the cables may be of any of a variety of different cables and not depart from the scope of the present invention."

Therefore Applicants' presently recited claims( using open ended term. "comprising " ) include cables bundles of cables grouped to gather by category encased in flame retardant PVC jacket similar to Langen and Applicants' presently recited claims do not include the limitation " avoiding the necessity from providing an outer casing.

With respect to claim 2 Langen describes the bundle of cables of claim 1 wherein the adhesive is heat-activated.( Langen col. 5 lines 25-30).

With respect to claims 3 and 4 Langen describes the bundle of cables of claim 1 wherein the adhesive is a thermoplastic heat sealable resin.( Langen col. 4 lines 20-35).

With respect to claim 5 Langen describes The bundle of cables of claim 1 wherein there are four cables.( Langen figure 2).

With respect to claim 7 Langen describes the bundle of cables of claim 1 wherein the flexible central member is a flexible strip. ( Langen col. 5 line 25-26 spirally wound strip).

With respect to claim 8 Langen describes the bundle of cables of claim 7 wherein the flexible strip is a woven polyester tape. ( Langen col. 4 lines 12 to 53).

With respect to claim 9 Langen describes the bundle of cables of claim 8 wherein the adhesive is a thermoplastic heat-sealable resin. ( Langen col. 4 lines 12 to 35 lines 54-55 etc.)

With respect to claim 10 Langen describes the bundle of claim 1 wherein the adhesive is located on the first and second sides of the flexible central member. ( Langen col. 5 lines 15 to 20).

With respect to claim 11 Langen describes bundled cables comprising: an adhesive tape having a first side and a second side; a heat-activated adhesive associated with the first side and a second side of the adhesive tape; and a plurality of

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cables for bonding to the adhesive of the adhesive tape in bundled fashion. ( Langen col. 5 lines 10 to 20).

***Claim Rejections - 35 USC § 102/103***

Claims 12-13 are rejected under 35 U.S.C. 102(b) /103 as being anticipated by over Langen et al. ( U.S Patent No. 4,997,689 ( herein after Lagen).

Claim12 and dependent claim 13 there form contain product by process limitations in a device claims and therefore are rejected under 102/103 under the provisions of MPEP 2113

“The Patent Office bears a lesser burden of proof in making out a case of *prima facie* obviousness for product-by-process claims because of their peculiar nature” than when a product is claimed in the conventional fashion. *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) (The claims were directed to a zeolite manufactured by mixing together various inorganic materials in solution and heating the resultant gel to form a crystalline metal

With respect to claim 12 Langen describes bundled cables comprising: a plurality of cables; a substantially flexible strip; and a thermoplastic heat-sealable resin associated with the flexible strip for removably bundling and semi permanently attaching in an externally accessible manner the cables to the flexiblestrip to facilitate manual detachment of one or more of said cables from said flexible strip . ( Langen col. 4 lines 12 to 53).

The limitations “for removably bundling and semi permanently attaching in an externally accessible manner the cables to the flexible strip” is/are taken to be a

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product by process limitations and non-limiting. A product by process claim is directed to the product per se, no matter how actually made. See *In re Fessman*, 180 USPQ 324, 326 (CCPA 1974); *In re Marosi et al.*, 218 USPQ289,292 (Fed. Cir. 1983); and particularly *In re Thrope*, 227 USPQ 964, 966 (Fed. Cir. 1985), all of which make it clear that it is the patentability of the final structure of the product "gleaned" from the process steps, which must be determined in a "product by process" claim, and the patentability of the process. See also MPEP 2113. Moreover, an old or obvious product produced by a new method is not a patentable process, whether claimed in "product by process" claims or not.

The limitation "externally accessible manner" and "to facilitate manual detachment of one or more of said cables from said flexible strip" are taken to be are taken to be mere recitation of newly discovered function or property, inherently possessed by things in the prior art (i.e. any thing that is not completely enclosed will be externally accessible fashion as stated in Applicants' specification page 5 lines 15-20 (reproduced below)).

"The cables 12, 14, 16, 18 are preferably individually jacketed cables. In a preferred embodiment, two of the cables are Category 5e # 24 gauge, four pair cables with flame-retardant PVC jackets for voice and data communication, and two of the cables are RG-6/U cables with flame retardant PVC jackets for video and data services. However, it is appreciated that the cables may be of any of a variety of different cables and not depart from the scope of the present invention."

Therefore Applicants' presently recited claims( using open ended term "comprising " ) include cables bundles of cables grouped to gather by category encased in flame retardant PVC jacket similar to Langen and Applicants' presently recited claims do not include the limitation " avoiding the necessity from providing an outer casing

With respect to claim 13 Langen describes the bundled cables of Claim 12 wherein the thermoplastic heat-sealable resin is a hot melt adhesive. ( Langen col. 4 line 12 to line 53).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langen et al. ( U.S Patent No. 4,997,689 ( herein after Lagen) as applied to claims 1-5, 7-11 above and further in view of Hillburn ( U.S. Patent No. 5,321,202 herein after Hillburn).

With respect to claim 6 Langen describes the bundle of cables of claim 5 without specifying the two cables being RG-6U cables.



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However, Hillburn a patent from the same field of invention describes in col.4 lines 55 to 65 etc. the cables are Category 5e cables and two of the cables are RG-6/U cables to provide better and reliable cables for high speed and cable signals and to fulfill industry standards ( e.g. CATV, communication, high speed cable, etc.) and FCC requirements.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include Hillburn's Category 5e cables and two of the cables are RG-6/U in Lagen's bundle in place of Lagen's unspecified cables. The motivation for the suggested substitution is to provide better and reliable cables for high speed and cable signals and to fulfill industry standards ( e.g. CATV, communication, high speed cable, etc.) and FCC requirements.

### ***Response to Arguments***

Applicant's arguments filed 12/20/2006 have been fully considered but they are not persuasive for the following reasons :

Applicants' contention that the applied Langen ( 4,997,689) and Hillburn ( 5,321,202) references teach away from the claimed invention is not persuasive for reasons set in detail out below .

Applicants' contention that their claims " avoid the necessity from providing an outer casing or sheath " is not persuasive as it is not presently recited in the claims and their contention is not commensurate in scope with the presently recited claims. ( see ***Constant V Advanced Micro-Devices Inc., 7 USPQ2d 1064***).

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Further assuming *arguendo* that Applicants have recited the limitation in claims The limitation “externally accessible manner “ and “to facilitate manual detachment of one or more of said cables from said flexible strip” are taken to be are taken to be mere recitation of newly discovered function or property , inherently possessed by things in the prior art ( i.e any thing that is not completely enclosed will be externally accessible fashion as stated in Applicants’ specification page 5 lines 15-20 ( reproduced below).

“The cables 12, 14, 16, 18 are preferably individually jacketed cables. In a preferred embodiment, two of the cables are Category 5e # 24 gauge, four pair cables with flame-retardant PVC jackets for voice and data communication, and two of the cables are RG-6/U cables with flame retardant PVC jackets for video and data services. However, it is appreciated that the cables may be of any of a variety of different cables and not depart from the scope of the present invention.”

Therefore Applicants’ presently recited claims( using open ended term “comprising “ ) include cables bundles of cables grouped to gather by category encased in flame retardant PVC jacket similar to Langen .

Applicants’ second contention that Langen describes a flexible sheet material made up of preferably three materials is not relevant to present claims as Applicants’ themselves have admitted

“To the contrary, although superficially there is a similarity of various materials employed attacking and bundling cables to a central member, as is generally known in the state-of-the-art, and wherein applicants do not particularly

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claim the novelty of the materials per se." ( Applicants' filed May 02, 2006, remarks section page 8 first full paragraph therein).

Applicants' next contention that the applied Langen reference can be distinguished on the basis of :

"Langen, et al., there is no disclosure nor any suggestion of rolling up sheets having pluralities of cables adhesively attached thereto in a parallel extending manner, which are then compressed within a heat-shrinkable container, so as to cause the kneadable plastic material interiorly thereof to expand and to fill any Voids under the application of heat. This has absolutely nothing in common with the present invention, as set forth and claimed herein, wherein the aspect of the semi-permanent bonding or attachment of the cables to the flexible central strip member is clearly elucidated in the claims, and which unambiguously and patentably distinguish over Langen, et al.'

Is also not persuasive because as stated above process limitations ( e. g how named) cannot form the basis of distinguishing device claims.

Applicants' same argument ( namely the sealing sleeve member must be spliced open in order to provide access to any cables contained therein ) with respect to Hillburn ( 5,321,202) that was argued before with respect to Langen was found to not persuasive herein and is also not persuasive for the reasons set out above and incorporate d here by reference for the sake of brevity.

Therefore all of Applicants' arguments are found to not persuasive .

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven H. Rao whose telephone number is ( 571)272-1718. The examiner can normally be reached on 8.00 to 5.00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fahmy Wael can be reached on (571) 272-1714. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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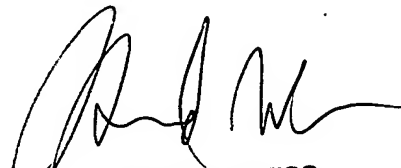
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Steven H. Rao

Patent Examiner

Feb. 22, 2007.



**HOWARD WEISS**  
**PRIMARY EXAMINER**